

Title	Small Claims: <i>Request to Postpone Small Claims Hearing</i> (new optional form SC-110) and <i>Order on Request to Postpone Small Claims Hearing</i> (new optional form SC-111)
Summary	Two proposed optional forms would implement the requirements found in Code of Civil Procedure section 116.570(a) of the Small Claims Act, which requires that a good cause request to postpone a small claims hearing be filed at least 10 days before the hearing date, unless the requesting party gives the court good cause why the request is being filed later. One proposed form is the request to postpone the hearing, and the other is the court's order on the request.
Source	Civil and Small Claims Advisory Committee
Staff	Cara Vonk, (415) 865-7669, cara.vonk@jud.ca.gov
Discussion	<p>Two optional small claims forms would help implement recent legislation that requires a request to postpone a small claims hearing to be filed at least 10 days before the hearing.</p> <p>In 2001, the Judicial Council circulated a similar <i>Request to Postpone Small Claims Hearing</i> form with the court's order on the reverse of the form, and a related rule, and received 18 responsive comments. The committee agreed with one commentator who suggested that the proposed procedure be established through legislation instead of a rule of court. The Judicial Council then sponsored such legislation that went into effect on January 1, 2003.</p> <p>The legislation required that a request for postponement be filed at least 10 days before the hearing, consistent with the practice in many courts. (See Code of Civ. Proc., § 116.570(a).) Additional new legislation, Code of Civil Procedure section 116.340, increased from 10 to 15 days the minimum time for service of a small claims claim before hearing if the defendant resides within the county and from 15 to 20 days if the defendant resides outside the county.</p> <p>The new legislation addresses a problem under the former statutes, whereby a defendant served with a claim on the last day for service before the hearing (10 days before the hearing) was effectively prevented from making a timely request for postponement of the hearing (at least 10 days before the hearing). Under the new legislation, a defendant now has at least five days for making a timely request for postponement (at least 10 days before the hearing) if the defendant is served with the claim on the last day for service before</p>

the hearing (15 days before the hearing if the defendant resides within the county).

Currently there is no Judicial Council–approved form for making a request to postpone the small claims hearing, although some courts have developed their own forms. The committee has incorporated into the current proposed forms several of the 2001 suggestions for improvement. For example, the current form includes more space for inserting names and addresses under the clerk’s certificate of mailing. The committee also agreed with the 2001 suggestion that there be two separate forms, one form with the request for a postponement that can be mailed immediately to the other parties in the case, and a separate form for the order that can be mailed later after the judge has considered the request for postponement.

The committee did not agree with the 2001 suggestion that the requesting party be required to fill in the addresses of the parties on the order. The committee believed that the court clerk should continue to be responsible for completing this information on the proof of service.

Although four commentators in 2001 recommended that the form be made into a mandatory form, the committee has concluded that this might not be practical for pro pers, who may not be aware of procedures and forms. The statute also specifically allows a request for postponement of the hearing to be made by letter.

The proposed forms and new Code of Civil Procedure section 116.570 follow.

Attachments

Code of Civil Procedure

116.570. (a) Any party may submit a written request to postpone a hearing date for good cause.

(1) The written request may be made either by letter or on a form adopted or approved by the Judicial Council.

(2) The request shall be filed at least 10 days before the hearing date, unless the court determines that the requesting party has good cause to file the request at a later date.

(3) On the date of making the written request, the requesting party shall mail or personally deliver a copy to each of the other parties to the action.

(4) (A) If the court finds that the interests of justice would be served by postponing the hearing, the court shall postpone the hearing, and shall notify all parties by mail of the new hearing date, time, and place.

(B) On one occasion, upon the written request of a defendant guarantor, the court shall postpone the hearing for at least 30 days, and the court shall take this action without a hearing. This subparagraph does not limit the discretion of the court to grant additional postponements under subparagraph (A).

(5) The court shall provide a prompt response by mail to any person making a written request for postponement of a hearing date under this subdivision.

(b) If service of the claim and order upon the defendant is not completed within the number of days before the hearing date required by subdivision (b) of Section 116.340, and the defendant has not personally appeared and has not requested a postponement, the court shall postpone the hearing for at least 15 days. If a postponement is ordered under this subdivision, the clerk shall promptly notify all parties by mail of the new hearing date, time, and place.

(c) This section does not limit the inherent power of the court to order postponements of hearings in appropriate circumstances.

(d) A fee of ten dollars (\$10) shall be charged and collected for the filing of a request for postponement and rescheduling of a hearing date after timely service pursuant to subdivision (b) of Section 116.340 has been made upon the defendant.

PARTY (Name and address):	
TELEPHONE NO. (Optional):	
E-MAIL ADDRESS (Optional):	
FAX NO. (Optional):	
SUPERIOR COURT OF CALIFORNIA, COUNTY OF	
STREET ADDRESS:	
MAILING ADDRESS:	
CITY AND ZIP CODE:	
BRANCH NAME:	
PLAINTIFF:	
DEFENDANT:	
REQUEST TO POSTPONE SMALL CLAIMS HEARING	FOR COURT USE ONLY DRAFT 10 3/19/03 CASE NUMBER:

IMPORTANT NOTICES

1. The requesting party must mail or personally deliver a copy of this request to each of the other parties and file it with the court. *(Code of Civil Procedure section 116.570(a)(3).)*
2. If the request is not filed with the court at least 10 days before the hearing, the requesting party must give the court a good reason why the request is being filed later. *(Explain under item 2 below.)* The court will decide if good cause was shown. *(Code of Civil Procedure section 116.570(a)(2).)*
3. If the plaintiff's claim was timely served on the defendant, there is a \$10 fee for filing a request to postpone the hearing. *(Code of Civil Procedure section 116.570(d).)* Submit the fee with this request.

REQUEST

1. I am the ☐ plaintiff ☐ defendant in this case.
2. a. I request that my small claims hearing (*date*): _____ be postponed for the following reason (*be specific*): _____
- b. ☐ This request is being made less than 10 days before hearing for the following reason (*be specific*): _____
3. a. I have ☐ mailed ☐ personally delivered _____ a copy of this request to each of the other parties in this case at the following address as required by Code of Civil Procedure section 116.570(a)(3) (*specify name and address*): _____
- b. ☐ In addition to the requirement above, I have also notified each of the other parties of this request by ☐ telephone ☐ e-mail ☐ fax.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date:

(TYPE OR PRINT NAME)

(SIGNATURE)

- | | | | |
|---|-------|--------|-------|
| Date: | Time: | Dept.: | Room: |
| <i>ALL PARTIES ARE ORDERED TO APPEAR IN COURT AT THE TIME AND PLACE SHOWN ABOVE.</i> | | | |

- Date: _____
- _____
(JUDICIAL OFFICER)

Code of Civil Procedure, § 116.570